HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 6058 of 2005

Between:

Sankuratri Rama Bharatudu

R/o MVP Colony, Visakhapatnam and

others .. Petitioners

AND

The Bharat Petroleum Corporation Limited

Visakhapatnam and others ..Respondents.

Counsel for the Petitioners: Sri D.V.Sitharam Murthy

Counsel for Respondent No.1: Sri Koka Raghava Rao

Counsel for Respondent No.2: Sri V.Rajagopal Reddy for

Smt. V.Preethi Reddy

Counsel for Respondent No.3: Sri T.S.Venkata Rao

Counsel for Respondent No.4: Govt. Pleader for Home

Counsel for Respondent No.5: Govt. Pleader for Revenue

Dated: February 21, 2006

::ORDER::

Per G.S.Singhvi, C.J.

This is a petition for issuance of a writ, order or direction declaring the action of Bharat Petroleum Corporation Limited to locate and establish petrol pump on Plot No. 1-84-17/1, Sector 4, MVP Colony, Visakhapatnam as illegal and also to quash the action of Visakhapatnam Urban Development Authority and Municipal Corporation of Visakhapatnam (respondents 2 and 3) to grant No Objection Certificate (NOC) to respondent No.1 as well as the action of Respondent Nos.

2 to 4 to facilitate the establishment of the petrol pump as illegal.

In the affidavit filed by petitioner No.1, it has been averred that MVP Colony is purely residential. It has been further averred that the official respondents have, in utter violation of the provisions contained in the Petroleum Act, 1934 and the rules framed thereunder, granted permission to respondent No.1 i.e., Bharat Petroleum Corporation Limited to install petrol pump at the site in question and, if they are not restrained from doing so, the life of the residents will be put to jeopardy.

In response to the notice issued by the Court, the official respondents have filed counter affidavits to controvert the averments contained in the petition. The parties have also filed several documents in support of their respective cases.

In the affidavit dated 21-4-2005 filed by Sri V. Srihari, Territory Manager of respondent No.1, it has been averred that even though the colony was initially developed by respondent No.2 as a residential colony, keeping in view the widespread commercialization, permission has been granted for establishing a petrol pump. It has been further averred that after obtaining the necessary NOC, the construction work had been completed and the writ petition was filed just before opening of the retail outlet. Along with his affidavit, Sri V. Srihari filed the documents to show that respondent No.3 had granted permission for establishing the petrol outlet and the competent authorities have granted licence and necessary permission/NOC.

In his affidavit dated 23-12-2005, Sri D. Venkataratnam, Chief Urban Planner of respondent No.2 has averred that initially the application made by respondent No.1 for permission to establish retail outlet was rejected, but on reconsideration, conditional permission was granted to the owner vide letter dated
22-5-2004.

Thereafter, respondent No.2 filed another affidavit along with photographs showing the status of construction.

On January 3, 2006 the Court, after perusing the photographs produced

by the learned counsel for respondent No.2, directed the Vice-Chairman of the said respondent to file affidavit detailing all the developments which have taken place since the date of allotment of plot to Sri T.Ramesh Kumar. He was also directed to file photographs showing the existence of the petrol pump.

In compliance of the aforementioned directions,
Sri G.Venkatram Reddy, Vice-Chairman of respondent No.2 filed affidavit dated January 21, 2006 along with two photographs showing the status of the petrol pump.

We have heard learned counsel for the parties and gone through the record. Since the petitioners have not chosen to specifically controvert the averments contained in the affidavits of Sri V. Srihari, D. Venkataratnam and that of Sri G. Venkataram Reddy, we are inclined to take the view that the petrol pump has been established at the site in question after obtaining the necessary NOC and permission etc., from the authorities concerned.

The question whether respondent No.2 could grant permission to Sri T. Ramesh Kumar (owner of the building) to raise construction and whether the latter could lease-out the plot to respondent No.1 for establishing petrol outlet cannot be effectively adjudicated in this petition because the petitioners have not chosen to challenge communication dated 22-5-2004 issued by respondent No.2, and agreement entered into between
Sri T. Ramesh Kumar and respondent No.1 for establishing petrol outlet at the disputed site.

In our opinion, the petitioners should avail the remedy of civil suit for adjudicating the contentions and disputed questions of fact, the determination of which would be a condition precedent for deciding whether or not the permission granted to Sri T.Ramesh Kumar suffers from any jurisdictional error or legal infirmity, and whether the permission, licence and no objection granted to Sri T. Ramesh Kumar and respondent No.1 are legally unsustainable.

For the reasons mentioned above, the writ petition is dismissed leaving the petitioners free to avail the alternative remedy of civil suit.

As a sequel to the dismissal of writ petition, all miscellaneous petitions, including the one filed by the petitioners for impleading Sri T. Ramesh Kumar

as party respondent are disposed of as infructuous. Needless to say that in the civil suit which may be filed by the petitioners hereinafter, Sri T. Ramesh Kumar should be impleaded as defendant so as to enable him to defend his interest.

G.S.SINGHVI, C.J.

February 21, 2006

G.BHAVANI PRASAD, J.

GRR / svs